



U.S. Department of Justice

United States Attorney
Southern District of New York

The Silvio J. Mollo Building
One Saint Andrew's Plaza
New York, New York 10007

October 18, 2022

BY ECF

The Honorable Alvin K. Hellerstein
United States District Court
Southern District of New York
500 Pearl Street, Room 1920
New York, NY 10007

Re: *United States v. Roderick Gunn*, 06 Cr. 911, 14 Cv. 3228 (AKH)

Dear Judge Hellerstein:

The Government respectfully submits this letter in connection with defendant Roderick Gunn's motion under 28 U.S.C. § 2255 ("Section 2255"), including his supplemental pleading in support of his Section 2255 motion in light of *United States v. Johnson*, 135 S. Ct. 2551 (2015), *United States v. Davis*, 139 S. Ct. 2319 (2019) and *United States v. Taylor*, 142 S. Ct. 2015 (2022), filed on July 18, 2022. Because the defendant's convictions under Section 924(c) and 924(j) were predicated on attempted Hobbs Act robbery and Hobbs Act robbery conspiracy, neither of which qualifies as a crime of violence under *Taylor* and *United States v. Barrett*, 937 F.3d 126 (2d Cir. 2019), the parties agree that those counts must be vacated, and the defendant should be resentenced on the remaining counts of conviction.

As to background, on May 3, 2010, a jury convicted the defendant of conspiracy to commit Hobbs Act robbery, in violation of 21 U.S.C. § 1951 (Count One); attempted Hobbs Act robbery, in violation of 18 U.S.C. § 1951 and 2 (Count Three); using and carrying, and aiding and abetting the use, carrying and possession of handguns, during and in relation to the robbery conspiracy and attempted robbery charged in Counts One and Three, in violation of 18 U.S.C. § 924(c)(1)(A)(iii) and 2 (Count Six); aiding and abetting the use of a handgun to shoot and kill an individual during and in relation to the robbery conspiracy and attempted robbery charged in Counts One and Three, in violation of 18 U.S.C. § 924(j)(1) and 2 (Count Seven); and conspiracy to distribute and possess with intent to distribute marijuana, in violation of 21 U.S.C. §§ 846 (Count Eight). On August 23, 2010, the defendant was sentenced to: (i) 20 years' imprisonment on Counts One, Three and Six, (ii) life imprisonment on Count Seven, and (iii) 40 years on Count Eight. ECF No. 207.

The defendant's co-defendant, Alton Davis, was also convicted on the above counts, as well as additional counts. On July 26, 2022, the Government submitted a letter to the Court requesting that the Court (i) set a date for an appearance at which the Government would consent to vacatur of the Section 924(c) and 924(j) counts of conviction for Mr. Davis and the defendant would be resentenced on the remaining counts of conviction. See ECF No. 375; see also *Davis*, 139 S. Ct. at 2336 ("[D]efendants whose § 924(c) convictions are overturned by virtue of today's ruling will not even necessarily receive lighter sentences: As this Court has noted, when a

Probation shall update
a PS/R. Re-sentencing
will occur March 23, 2023,
at 11:00 AM
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defendant's § 924(c) conviction is invalidated, courts of appeals routinely vacate the defendant's entire sentence on all counts so that the district court may increase the sentences for any remaining counts if such an increase is warranted." (citation and internal quotation marks omitted)). The Government further requested (ii) that the Court direct the preparation of a supplemental Presentence Investigation Report, and (iii) that the date set for the appearance leave time, in advance of that appearance, for the parties' review of the Report and filing of sentencing submissions as well as the defendant's transportation to this district and meeting with counsel. On September 1, 2022, the Court granted the Government's request and sentenced the re-sentencing of Mr. Davis for November 11, 2022, which has since been adjourned to March 29, 2023.

Because the defendant Roderick Gunn is similarly situated, and his Section 924(c) and 924(j) counts of conviction must be vacated for the same reasons, the Government makes the same requests as to Mr. Gunn.

Respectfully submitted,

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CC (BY ECF)
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